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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/518,040

12/09/2004

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2842

3590

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06/23/2009

EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3734

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/518,040	Applicant(s) MANZO, SCOTT	
	Examiner MICHAEL G. MENDOZA	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-34 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 26-34 and 36-38 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

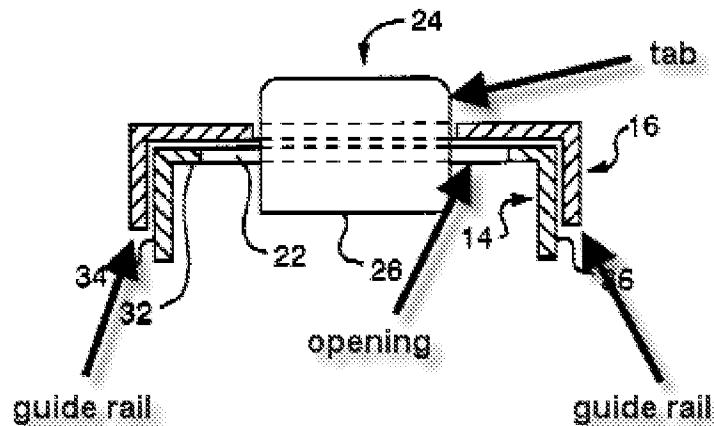
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 26 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Brockway et al. 6152455.
4. Brockway et al. teaches a radially expanding joining member, comprising: an annular body portion defining a longitudinal axis including distal and proximal terminal edges, first and second side terminal edges (see figs.); at least one annular array of openings (22) formed in the annular body; and at least one locking tab (26) extending tangentially from the first side terminal edge, each locking tab being in registration with a respective array of openings and receivable in the openings, wherein the joining member has a first position and a second position, wherein the at least one locking tab inhibits the annular body from returning to the first diameter by being received in an opening of the at least one array of openings (col. 4, line 50-col. 5, line 5); a pair of guide rails extending radially inward from an inner surface of the annular body portion and extending circumferentially a substantial length of the at least one annular array of

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openings such that the at least one locking tab is slidably received between the pair of guide rails.



Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockway et al.

7. Brockway et al. teaches the claimed invention except for two annular arrays and two tabs. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have two arrays and two tabs, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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8. Claims 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Debue 3683940 in view of Brockway et al.

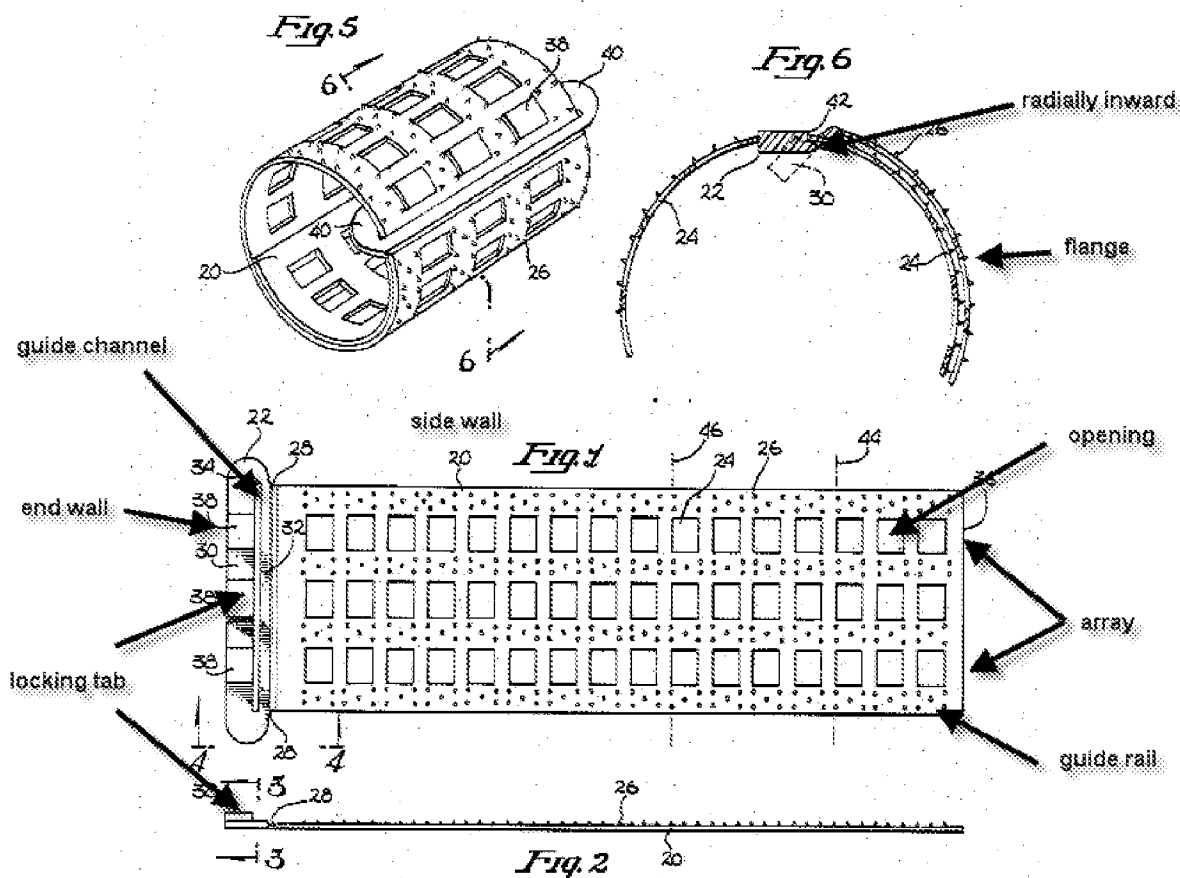
9. Debue teaches a radially expanding joining member, comprising: an annular body portion defining a longitudinal axis including distal and proximal terminal edges, first and second side terminal edges; at least one annular array of openings formed in the annular body; and at least one locking tab extending tangentially from the first side terminal edge, each locking tab being in registration with a respective array of openings and receivable in the openings, wherein the joining member has a first position and a second position, wherein the at least one locking tab inhibits the annular body from returning to the first diameter by being received in an opening of the at least one array of openings. It should be noted that Debue fails to teach ; a pair of guide rails extending radially inward from an inner surface of the annular body portion and extending circumferentially a substantial length of the at least one annular array of openings.

10. Brockway et al. teaches a device with common guide rails (fig. 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Debue in view of Brockway et al. to keep the distal and proximal terminal edges aligned within each other for proper engagement of the locking tab with the openings.

11. Debue/Brockway teaches the joining member according to claim 26, including two annular arrays and two tabs extending tangentially from the first side edge; guide rails formed, one each, along each side of the two annular arrays of openings; a guide channel formed near the second side terminal edge; wherein the guide channel is

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defined by a pair of side walls extending radially inwardly from the distal end proximal terminal edges; wherein the guide channel is further defined by an end wall interconnecting the terminal ends of the pair of side walls; and a plurality of flanges extending radially outward.



12. Claims 26-28, 33, 34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan et al. 5984963 in view of Brockway et al.

13. Ryan et al. teaches a radially expandable joining member, comprising: an annular body portion defining a longitudinal axis including distal and proximal terminal

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edges, first and second side terminal edges; at least one annular array of openings formed in the annular body; and at least one locking tab extending tangentially and radially from the first side terminal edge (col. 8, lines 41-44), each locking tab being in registration with a respective array of openings and receivable in the openings; wherein the joining member has a first position and a second position (figs 13 & 14), wherein the at least one locking tab inhibits the annular body from returning to the first diameter by being received in an opening of the at least one array of openings (col. 11, lines 37-51);

14. It should be noted that Ryan et al. fails to teach ; a pair of guide rails extending radially inward from an inner surface of the annular body portion and extending circumferentially a substantial length of the at least one annular array of openings.

15. Brockway et al. teaches a device with common guide rails (fig. 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Ryan et al. in view of Brockway et al. to keep the distal and proximal terminal edges aligned within each other for proper engagement of the locking tab with the openings

16. Ryan/Brockway teaches the joining member according to claim 33, wherein each of the openings of that at least one annular array of opening is defined by an angled wall such that an upper edge of the angled wall is closer to the second side terminal edge than a lower edge of the angled wall (see openings of fig. 24); a pair of guide rails formed on an inner surface of the annular body (defined by outer edge and openings); and wherein the joining member is fabricated from a bio-absorbable material (see abstract).

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17. Claims 37 and 38 rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan et al. in view of Brockway et al. as applied to claim 33 above, and further in view of Khosravi et al. 6048360.

18. Ryan/Brockway teaches the joining member according to claim 33. It should be noted that Ryan/Brockway fails to teach wherein the joining member is fabricated from a shape member alloy. Ryan/Brockway teaches the use of a resilient polymer.

19. Khosravi et al. teaches of a polymer or an alloy that have shape memory characteristics (col. 6, lines 34-46). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device or Ryan/Brockway use an alloy in view of Khosravi et al. since an alloy is an obvious alternative to a polymer sharing the same characteristics.

20. Ryan/Brockway/Khosravi teaches the joining member according to claim 33, wherein the joining member includes a plurality of projection along an outer surface of the annular body portion (col. 10, lines 46-54).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./
Examiner, Art Unit 3734

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3734